IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 561 of 2004.

Decided on: May 3,2007.

Telecom District Manager

… … … Petitioner.

Versus

Shashi Kamal and another.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the petitioner: **Mr. Ratish Sharma, Advocate.**

For Respondent No.1: **Mr. Rahul Mahajan, Advocate.**

Rajiv Sharma, Judge:

This petition is directed against the award passed by the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh (herein after referred to as the Tribunal) dated 31.3.2004.

The necessary facts for the adjudication of this petition are that the Central Government, Ministry of Labour vide letter No. L-40012/215/99/IR(DU) dated 21st October, 1999 has referred the following dispute to the Tribunal which is reproduced as under: -

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Whether reporters of local papers may be allowed to see the judgment? Yes.

"Whether the action of the Telecom Distt. Manager, Hamirpur (HP) in terminating the services of Shri Shashi Kamal son ofSh. Sarav Ram w.e.f. 1-8-1996 and again w.e.f. 10-11-1998 is legal and justified? If not, to what relief he is entitled?"

The workman had been engaged in two spells. The first spell was w.e.f. 29.9.1995 as daily rated labourer upto 31.7.1996 when his services were terminated and thereafter w.e.f. 1.8.1996 to 10.11.1998. The thrust of the submission made by the workman before the Tribunal was that the petitioner's earlier retrenchment effected on 1st August, 1996 and second retrenchment effected w.e.f. 10.11.1998 was contrary to law. The workman had contended before the Tribunal that he had completed 240 days preceding his retrenchments effected on 1.8.1996 and 10.11.1998 and thus he was entitled to protection under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). This contention of the petitioner-workman that he had completed 240 days preceding his date of retrenchment was contested by the Management. The learned Tribunal after hearing the parties came to a definite conclusion that the workman had completed 240 days during the period from September, 1995 to the date of retrenchment, i.e. 31.7.1996 and has also worked for more than 240 days even from the date of vacation of stay in the writ petition, i.e. 29.101996 to 9.11.1998. The Tribunal has come to this conclusion since no evidence was led by the Management contrary to it.

The plea of the Management that the workman was not appointed in accordance with rules of the Department was not found tenable by the learned Tribunal. The learned Tribunal has distinguished the judgment cited by the Management and has given a finding that the workman had completed 240 days in 12 calendar months and his termination was without following the mandatory procedure under Section 25-F of the Act. The findings recorded by the Tribunal do not suffer from any jurisdictional error, nor there is any illegality.

Mr. Ratish Sharma has contended that the Labour Court could not award back wages while granting the relief of reinstatement including continuity of service. Mr. Rahul Mahajan has cons tested this submission of Mr. Ratish Sharma and has drawn the attention of this Court to the cross-examination of the workman where he deposed that he was unemployed after his retrenchments. Once the workman has stated in his cross-examination that he was not given employment, it was incumbent upon the Management to lead evidence to disprove his submission.

Accordingly, the relief granted by the learned Tribunal of reinstatement and back wages with continuity of service is in accordance with law. There is neither any procedural illegality nor jurisdictional error in the award dated 31.3.2004.

Hon'ble Supreme Court in **Calcutta Port Shramik Union v. The Calcutta River Transport Association and others AIR 1988 Supreme Court 2168** has held that the interference in the

awards passed by the Industrial Tribunals by the High Courts should not be on hyper-technical grounds. Your Lordships have opined as under:-

> **"The object of enacting the Industrial Disputes Act 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hyper-technical grounds. Unfortunately the orders of the single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis."**

It is settled proposition of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the Labour Court. Hon'ble Supreme Court has also held in **Indian Overseas Bank versus I.O.B. Staff Canteen Workers' Union and Another (2000) 4 SCC 245** that exercising the powers under Articles 226 and 227 of the Constitution, the interference with pure findings of facts and re-appreciation of the evidence is held to be impermissible. It was also held that even insufficiency of evidence of that another view possible there is no ground to interfere with the findings of the Industrial Tribunal. Your Lordships have opined as under:-

> **"The learned Single Judge seems to have undertaken an exercise, impermissible for him in**

> **exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his won on pure questions of fact, unmindful, though award fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken."**

Hon'ble Supreme Court has again considered this aspect in **Sugarbai M. Siddiq and Others versus Ramesh S. Hankare (dead) by LRs. (2001) 8 SCC 477** and has held that scope of powers of High Court is concerned not with the decision of the lower court/Tribunal, but with its decision making process. High Court must ascertain whether such Court or Tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, and then only High Court can interfere with otherwise not. Your Lordships have held as under:-

> **"There can be little doubt that in an application under Article 227 of the Constitution, the High Court has to see whether the lower Court/tribunal has jurisdiction to deal with the mater and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision-making process. On this ground alone the order of the High Court is liable to be set aside."**

In view of the above discussion and considering the observations of Hon'ble Supreme Court in the decisions referred above and looking into the findings recorded by the Labour Court on the basis of evidence led by the parties before it, according to this court, the Labour Court has not committed any jurisdictional error, impropriety or procedural irregularity while announcing the award. Therefore, this Court cannot reappreciate the evidence which was appreciated by the Labour Court.

Therefore, there is no substance in the petition which requires rejection and is ordered accordingly. The petition is dismissed with costs quantified at Rs.1100/-. The amount lying deposited in the bank shall be disbursed to the workman forthwith. The workman is also held entitled to the back wages from the date of award, i.e. 31.3.2004 till the date of re-engagement with interest @ 9% per annum.

(Rajiv Sharma)
Judge

May 3, 2007.
(sck)